

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AURELIA MANCILLA,

Plaintiff,

-against-

ABM INDUSTRIES, INCORPORATED;
ABM INDUSTRIES, INCORPORATED d/b/a ABM
JANITORIAL SERVICES, INC.; ABM
INDUSTRIES, INCORPORATED d/b/a ABM
ONSITE SERVICES, INC.; SCOTT SALMIRS; and
EDDIE SANDERS,

Defendants.

**DECLARATION OF RHONDA
RAWLINS IN SUPPORT OF
DEFENDANT ABM's MOTION TO
COMPEL ARBITRATION AND
DISMISS OR STAY ACTION**

1:20-CV-01330

I, Rhonda Rawlins, hereby declare and state under penalty of perjury, under the laws of the United States of America and pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. My name is Rhonda Rawlins. I am over the age of 18 years and am competent to make this Declaration in support of ABM Aviation, Inc.'s ("ABM") Motion to Compel Arbitration and Dismiss or Stay Action. The facts set forth herein are based on personal knowledge. To the extent I do not have personal knowledge, they are based on the records maintained by ABM in the ordinary course of business.

2. I am the Human Resources Director for ABM and have been in that role since September 2002. As the Human Resources Director, I oversee all Human Resources-related activities, including onboarding.

3. ABM maintains a Mutual Arbitration Agreement (the "Agreement"). Annexed hereto as Exhibit A is a true and correct copy of the Agreement.

4. Plaintiff began her employment with ABM on or about August 31, 2018. Plaintiff was employed as a janitorial worker in ABM's Atlanta, Georgia Airport location.

5. On August 31, 2018, at approximately 1 p.m., Plaintiff knowingly and voluntarily agreed to abide by the terms of the Arbitration Agreement by electronically signing the following Mutual Arbitration Agreement Acknowledgment ("Acknowledgment"). A true and correct copy of the Acknowledgment is annexed hereto as Exhibit B.

6. ABM uses recruiting technology called Jobalign as an applicant tracking system during the hiring process. Applicants are required to provide contact information including an email address that is entered into the system.

7. Defendant contracts with a third-party vendor, Sterling Talent Solutions ("Sterling"), to perform employment background checks on candidates and to manage the onboarding process for employment. When an applicant applies for a job with Defendant, the applicant is required to provide a contact email address. The applicant is also required to create a password known only to the applicant. Once Defendant has interviewed and offered the applicant a position, Defendant electronically provides pertinent information to Sterling including the applicant's email address. This electronic transmission to Sterling occurs when a recruiter or hiring manager changes the candidate status to "hired" and clicks the "onboard" button in Jobalign.

8. Sterling sends the applicant (now candidate) an instructional email providing a username and temporary password together with a link to the ABM Candidate Portal. The process is as follows:

- The first step in the process requires the candidate to click on the "Get Started" link in the email that directs the candidate to the ABM Candidate Portal. Once directed, the

candidate must enter his/her Username and Password into the browser. This provides access to the ABM Candidate Portal.

- The candidate's attention is drawn to his/her inbox where he/she is tasked to "Review and Sign Job Offer Confirmation" and instructed to click on the "Launch Task" link. This link pulls up an electronic Job Offer Confirmation document containing information about the candidate, the position, job site location, rate of pay, start/hire date and pay frequency. The candidate is instructed to review the information on the Job Offer Confirmation.

- The candidate is provided information on e-signing documents. The candidate is asked to consent to use an electronic signature to electronically sign various forms. The candidate is provided with a Consent and Notice Regarding Electronic Signature which reads, in pertinent part, as follows:

By clicking the "I agree to use an electronic signature" button, you agree to electronically sign the following forms. You agree your electronic signature is the legal equivalent of your manual signature. You further agree that your use of the keypad, mouse, or other device to select an item, button, icon or similar act/action, constitutes your signature as if actually signed by you in writing. You also agree that no certification authority or other third-party verification is necessary to validate your electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of your electronic signature.

...

If you decline to use an electronic signature by clicking the "I Decline to Use an Electronic Signature" button, you will be asked to enter your reason for declining.

You should contact your employer to manually sign your document. After authorizing the use of your electronic signature, you may still withdraw your consent. To do so, you must contact the employer for their withdrawal procedures, and to understand any consequences or fees which may apply.

9. There are two links for the candidate to choose: One provides "I Agree to Use an Electronic Signature" and the other states "I Decline to Use an Electronic Signature." If the candidate selects the "I Decline to Use an Electronic Signature" button, the candidate is asked to

provide a reason for declining. The process ends at this point and the candidate cannot move forward with electronic onboarding through Sterling. The candidate may then contact ABM to manually sign the documents as an alternative to electronic signing; however, if the candidate chooses not to sign the documents manually or electronically, he or she may not continue the application process.

10. If the candidate has agreed to use an electronic signature, the candidate is given the choice of a button to select a signature or a button to draw an electronic signature. In the event the candidate selects the "Signature" button, an electronic version of their name and of their initials appears in cursive. This is not the same as a facsimile of the usual signature that the candidate uses. In the event the candidate selects the "Or draw your signature" button, the candidate has the option to draw their own electronic signature and initials to use going forward. After selecting their preferred electronic signature format, the candidate is requested to click on the "Proceed to e-Sign Preview" button.

11. The candidate will then receive an email from the Candidate Portal. The email advises the candidate that as part of their application with ABM, a preemployment screening is required. The email directs the candidate to review their rights under the Fair Credit Reporting Act by visiting a link that is provided in the email:

http://www.talentwise.com/fcra/Files/FCRA_Summary_of_Rights.pdf.

It also instructs the candidate to visit the following URL link to access the Applicant Certification and Authorization form to proceed to the pre-employment screening.

[https://portal.talentwise.com/33ff5abc58b/ptl/dashboardphp?&Sender=16808979&Email=Ron.Springs ABM%40vahoo.com&OverrideCandidateID=5155181](https://portal.talentwise.com/33ff5abc58b/ptl/dashboardphp?&Sender=16808979&Email=Ron.Springs%40vahoo.com&OverrideCandidateID=5155181)

12. Following successful completion of the background check, the candidate is considered an employee and is sent an email by Sterling from the Candidate Portal. The employee is instructed to click the "Get Started" button to sign into the Candidate Portal and tasked to complete and sign onboarding acknowledgement forms.

13. The Candidate Portal provides a list of electronic documents and policies that must be opened, reviewed in their entirety, completed, and, if agreed, signed in the following order:

Form CC-305; EEO Form; Emergency Contact; W4; Biometric Clock; Policy Employee Notice and Consent Form; Direct Deposit Authorization; Pay Method Selection; Health Care Exchange Notice Acknowledgment; Wage Policy Acknowledgment; Employee (Service) Handbook Acknowledgement; Mutual Arbitration Agreement Acknowledgment; Employee Instructions, Information, and Work Rules Acknowledgment; Drug-Free Workplace Policy Acknowledgment; Customer Confidentiality Acknowledgement; Policy Against Harassment in the Workplace Acknowledgement; Prior Employer Information; Acknowledgement; Code of Business Conduct (COBC).

14. The candidates are given unlimited time to read and review the policies and are not monitored by any individuals.

15. Finally, the employee is asked to regularly check their email account for emails from the Candidate Portal. If employees have any difficulty completing this process, they are instructed to contact the Hiring Manager or HR Department. This concludes the electronic onboarding process through Sterling and at this point the employee has been onboarded.

16. As the Human Resources Director for ABM over the location where Plaintiff worked in Atlanta, Georgia, I have electronic access to the records Sterling maintains relating to the employment of Plaintiff.

17. After accessing those records, I reviewed the electronic Log Entry and verified that Plaintiff's onboarding followed this process. I viewed that on August 16, 2018 at 8:49 a.m. p.m., a Job Offer Confirmation initial notification email was sent to Plaintiff Aurelia Mancilla. The Log Entry also reflects that Ms. Mancilla accessed the Sterling Candidate Portal on August 31, 2019. A copy of Plaintiff's Log Entries are annexed hereto as Exhibit C.

18. The Log Entry reflects that the following documents concerning Ms. Mancilla were electronically signed by Ms. Mancilla, on August 31, 2019:

- ABM Biometric Privacy Employee Notice and Consent Form; Code of Business Conduct; Customer Confidentiality; Drug-Free Workplace Policy Agreement; Emergency Contact Information; Employee Instructions, Information and Work Rules; Service Worker Employee Policy Handbook Acknowledgment; Employee's Withholding Allowance Certificate; Employment Eligibility Verification; Form W-4 Confirmation for California; Health Care Exchange Notices; Mutual Arbitration Agreement Acknowledgment; Pay Method Selection; Policy Against Harassment in the Workplace; Acknowledgement Regarding Prior Employer Information; and Wage Policy.

19. Ms. Mancilla Log Entries establish that she followed the onboarding process provided by Sterling.

Date: February 21, 2020


RHONDA RAWLINS